

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAIN STREET AMERICA :
ASSURANCE COMPANY :
: :
and : :
: :
NGM INSURANCE COMPANY, : :
: :
Plaintiffs, : :
: :
v. : Case No. 2:22-cv-03805-TJS :
: :
ADVANCED PLASTERING, INC. : :
: :
Defendant. : :
: :

JOINT REPORT OF RULE 26(f) MEETING

In accordance with Federal Rule of Civil Procedure 26(f), counsel for the parties conferred by phone on November 8, 2022, and submit the following report of their meeting for the court's consideration:

1. Discussion of Claims, Defenses and Relevant Issues

Plaintiffs Main Street America Assurance Company (“MSAAC”) and NGM Insurance Company (“NGM”) (together with MSAAC, “Main Street”) issued general liability insurance policies (the “Main Street Policies”) to Defendant Advanced Plastering, Inc. (“Advanced Plastering”). MSAAC issued primary policies (the “MSAAC Policies”), and NGM issued umbrella insurance policies (the “NGM Policies”).

Advanced Plastering has been joined as a defendant in the lawsuit captioned *Haverford Reserve Community Association v. Haverford Reserve, LP*, No. 2016-11177 (Pa. Ct. Common Pleas Delaware Cnty.) (the “Underlying Lawsuit”). The Underlying Lawsuit was originally brought by a community association representing 100 homes in a Philadelphia suburb against the

developer and general contractor for the homes (and related corporate entities) for alleged construction defects and resultant damage in the homes. Defendant Advanced Plastering was joined in the Underlying Lawsuit by the original builder defendants. Two of its insurers, MSAAC and Selective Insurance Group, Inc. (“Selective”), are currently contributing to its defense.

Main Street and Advanced Plastering disagree about whether the Main Street Policies obligate Main Street to defend Advanced Plastering in connection with Underlying Lawsuit. Main Street’s core arguments raise pure questions of law that require no discovery: (1) the claims against Advanced Plastering in the Underlying Lawsuit are not claims for property damage caused by an occurrence, as “occurrence” is defined in the Main Street Policies, and (2) the pleadings in the underlying lawsuit do not allege property damage that manifested during the policy periods of the Main Street Policies. Advanced Plastering has moved to dismiss the action, contending that to the extent that any damage to the homes occurred as a result of work or materials (products) performed or supplied by subcontractors of Advanced and/or to work or materials performed by others, then such damage was not expected or foreseeable and constitutes an occurrence.

2. Informal Disclosures

The parties have exchanged initial disclosures.

3. Formal Discovery

The parties agree that this case raises only issues of law which are properly resolved using the pleadings, the documents attached thereto, and any exhibits properly included with any filings with the Court. The parties recommend that this Court set a briefing schedule for motions

to dismiss or for judgment on the pleadings before initiating written discovery on any remaining questions or issues.¹

4. Electronic Discovery

The parties do not anticipate a need for electronic or ESI discovery. The parties will exchange any documents in either PDF or native format at the producing party's option. The parties reserve the right to amend this agreement or move for a new electronic discovery regime if discovery reveals the need for more advanced electronic or ESI discovery.

5. Expert Witness Disclosures

The parties do not anticipate a need for expert testimony in this action.

6. Early Settlement or Resolution

The parties and Selective participated in several sessions of a global mediation of the Underlying Lawsuit. From Main Street's perspective, that mediation raised but did not resolve issues raised in this action. From Advanced Plastering's perspective, the mediation raised but did not resolve the issues raised in the Underlying Lawsuit and remains ongoing.

Advanced Plastering currently believes that alternative dispute resolution in this action could be helpful. Although Main Street believes that this matter can be resolved on the pleadings, it remains open to opportunities for early resolution.

7. Trial date

The parties do not need a specific or firm trial date. Counsel have no irreversible scheduling conflict that would affect the setting of a trial date other than Blair H. Granger, Esquire (lead trial counsel for Advanced Plastering) is attached in Chester County for a two

¹ The parties anticipate dispositive motion practice based on the pleadings regarding the duty to defend. If any issues remain after a decision by the Court on the issue of duty to defend, the parties may take discovery concerning the duty to indemnify to the extent that remains part of the case.

week special listing trial commencing October 30, 2023. The parties recommend a trial date between August 2023 and October 2023, which would provide enough time for legal briefing on purely legal issues, any remaining discovery, and pretrial preparation.

8. Other Matters

At this time, there is no joint agreement by the parties to referral of this action to a magistrate judge.

Dated: November 9, 2022

Respectfully submitted,

/s/ Gerald D. Wixted²

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² Mr. Wixted has signed this for Mr. Granger with his permission.